



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
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Dear Mr. Masson, Dr. Sayers and Mr. Johnson,

The Office of Science and Technology in the U.S. Environmental Protection Agency's Office of Water is pleased to provide you with the final Biological Evaluation of Aquatic Life Criteria – Cyanide. In our letter of January 27, 2006, we transmitted a draft of the Cyanide (CN) Biological Evaluation (BE) and stated that we believed the document to be complete and ready for formal submission pending your preliminary review for completion. In that same letter, we asked you to notify us in writing by February 28, 2006 if you identified any additional information necessary to complete the CN BE.

We received letters from your offices dated April 18, 2006 and April 21, 2006 that indicated you needed a more transparent explanation between the evidence presented and the conclusions reached in order to consider the draft BE to be complete. During our Oversight Panel meeting on May 24, 2006, we further discussed the comments and concerns of the Fish and Wildlife Service and EPA's intention to revise the CN BE to address them.

EPA has now rewritten the CN BE to improve the explanation of the best available data and our determination as to whether our recommended aquatic life criteria for cyanide is likely to jeopardize the continued existence of any threatened or endangered species, or result in the destruction or adverse modification of habitat of such species. The final document is clearly laid out to assist the reader through the risk assessment process which includes the toxicity assessment, the exposure assessment and the risk characterization steps. In addition, information and effects determinations from the tables are now discussed in a narrative format to further assist the reader.

In addition, your letters indicated that the draft CN BE was not complete because the exposure assessment did not contain enough information to support the conclusions reached. Specifically, you asserted that the exposure assessment needed to provide information to determine the probability of whether each species would be exposed to acute or chronic assessment effects concentrations (as calculated in the initial toxicity screen). The letters included examples of evidence necessary to support EPA's conclusions, such as specific monitoring data that shows historic cyanide concentrations in waters inhabited by each species below the acute and chronic assessment effects concentrations, and evidence that there are no point sources authorized to discharge cyanide into waters inhabited by listed species both now and in the future. In addition, a request was made that EPA conduct an exposure assessment in a manner that would produce exposure profiles for each species in terms of intensity, space and time in units that can be combined with the toxicity screen assessment.

In order to address your concerns, this revised final CN BE now includes an expanded exposure assessment that evaluates whether each of the 32 species, which were not screened out in the initial conservative toxicity screen, will be exposed to elevated concentrations of cyanide due to permitted dischargers in the waterbodies within the species' distribution. We now use this information along with the secondary toxicity screen assessment, as part of the risk characterization step, to make final effects determinations whether our aquatic life criterion for cyanide is likely to adversely affect each listed species. As required under ESA section 7(a)(2), EPA has used the best scientific and commercial data available when preparing this revised final CN BE to address the concerns specified in your letters.

Finally, we need to express our concern with the slow pace and inordinate expense of the national consultations for our aquatic life criteria. All of us had great expectations of a streamlined process when we signed the 2001 Memorandum of Agreement between our agencies that initiated these national consultations (66 FR 11202; February 22, 2001). The national consultations were intended to be a more consistent

and efficient approach rather than conducting consultations on a State-by-State basis when we approve each States' water quality standards package. The MOA framed the procedures for these consultations (see section VI.C.2.) and indicated that we would collectively endeavor to streamline our processes to complete these consultations in an expedited manner. In addition, the agreement was that these consultations would be conducted on a national basis, and therefore, would not be waterbody-specific, and that the effects on species would be evaluated to the maximum extent possible on groupings of species believed to be affected in a similar manner. We believe that our collective goal was to really focus most of our attention and resources as Program Managers on those national criteria that posed a real likelihood of adversely affecting listed species.

Today, based on your comments on our first draft CN BE, we find ourselves having to consider the potential effects of cyanide at aquatic life criteria concentrations on individual species in individual waterbodies, even though we all agree that cyanide is not of great concern. It has taken us over a year of time and close to \$100,000 to complete the CN BE to your satisfaction. This current level of effort is not something we can sustain in the future for any aquatic life criteria that are not known to be a real concern to listed species based on incident data or other information. We are becoming increasingly concerned about the utility of this effort as a way to streamline consultations on a State-by-State basis. We need to thoroughly reconsider how we are approaching the national consultation on our criteria and we need to have a discussion whether the benefits of this effort are worth the costs.

In the meantime, and as stated above, we are formally submitting this final Cyanide National Biological Evaluation for your review since we consider this document and analysis to be complete. As outlined in 50 CFR 402.12(j), we expect a written response within 30 days as to whether you concur with our findings.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Keehner", followed by the date "6/29/06" written vertically.

Denise Keehner
Director, Division of Standards and Health Protection
Office of Science and Technology, Office of Water
U.S. Environmental Protection Agency

A handwritten signature in black ink, appearing to read "Edward Ohanian", followed by the date "6/29/06" written vertically.

Edward Ohanian
Director, Division of Health and Ecological Criteria
Office of Science and Technology, Office of Water
U.S. Environmental Protection Agency